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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,109	01/14/2004	Steven B. Dunn	MBI-1164	2938

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,109

Applicant(s)

DUNN ET AL.

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 and 47-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 63 is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-21, 23-32, 35-39 and 47-69 is/are rejected.
- 7) ☒ Claim(s) 14-17, 22, 33, 34 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-40, and 47-69 have been considered but are moot in view of the new ground(s) of rejection. The indicated allowability of claims 6, 8, 21, 32, 35, 39, 52 and 54 (as they depended from original claims 1, 23 and 47, respectively, and as they are now currently re-written as claims 61, 62, and 64-69) s withdrawn in view of reconsideration of the cited prior art. Rejections based on these reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5, 11, 18, 23, 24, 27, 30, 35, 36, 47, 48, 51, 57, 60 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Burnett (2,273,559). Burnett discloses a receptacle containing a powder (10) which is considered to be a styptic material comprising a storage container bottle (5) with a chamber for holding the powder; wherein the interior of concave chamber (6) disk valve (14) and spout or port (13) are considered to be devices for applying the styptic powder; a removable sealing cap or covering means (20) for the storage container, wherein the cap is flush with a

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side of the container; and a removably attached cross hatched filing device (21) located on an interior side of the container, and has a blunt ended shank portion for attachment to or socket (22) for removably attaching the filing device to the container.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21, 39, 64 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burnett ('559) in view of Lenz (2,290,886). Although Burnett shows a styptic applicator, it does have a handle. Lenz teaches a styptic pencil having a handle (27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Burnett receptacle have a handle as taught by Lenz to facilitate easy carriage and handling of the device.

6. Claims 1-5, 9-13, 18, 19, 23-27, 29-31, 36, 37, 47-51, and 55-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffiths, Jr. (5,762,077) in view of Burnett ('559). Griffiths, Jr. discloses a manicure device capable of being used to apply styptic to a pet comprising a storage container bottle (12,42) with a chamber for holding a fluid (the chamber is capable of holding styptic); a removable cap or covering means (112,136) for the container, wherein the cap is flush with a side of the container; an applicator device (78,96) for applying the fluid; and a filing device

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(132,148) which is located on top and bottom sides of the container depending on your orientation and to which file is being referred; wherein the filing device is an emery board and can also come in a variety of textures (col. 7, lines 4-5); wherein the cap(s) comprise a gripping depression (122,142) on a side. Griffiths, Jr., however, do not specifically disclose that the fluid in the chamber is a powder. Both Griffiths, Jr. and Burnett teach vanity receptacles, however Burnett further teaches the use and storage of fluid powder in the receptacle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the fluid disclosed in Griffiths, Jr. be a powder styptic depending on the need of the user (e.g. first aid kit, to treat bleeding nails cut or filed too deep). With respect to claims 10-13, 30, 31, and 56-59, Griffiths, Jr. discloses that the filing device comprises emery board and can come in a variety of textures, therefore to provide that the texture has a herring bone cross-hatch, both coarse and fine cross-hatch, or is made of metal or sandpaper would have been obvious to one of ordinary skill in the art since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Additionally, Applicant's description of using different textures lacks disclosed criticality.

7. Claims 1, 2, 5-9, 18, 23, 24, 27, 28, 29, 36, 47, 48, 51-55, 60-62, 68 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratby-Carey (5,897,262) in view of Burnett ('559). Bratby-Carey discloses a manicure device capable of being

used to apply styptic to a pet comprising a storage container bottle (12,28) with a chamber (14,30) for holding a fluid (the chamber is capable of holding styptic); a removable cap or covering means (44) for the container, wherein the cap is flush with a side of the container; an applicator device (22,42) for applying the fluid; and a removably attached filing device (16) which is located on a side portion of the container (12), wherein the filing device is an emery board and it is attached to the container by means of a sticky adhesive coating material. Bratby- Carey, however, do not specifically disclose that the fluid in the chamber is a powder. Both Griffiths, Jr. and Burnett teach vanity receptacles, however Burnett further teaches the use and storage of fluid powder in the receptacle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the fluid used in one of the chambers disclosed in Griffiths, Jr. be a powder styptic depending on the need of the user (e.g. first aid kit, to treat bleeding nails cut or filed too deep). With respect to claims 6, 8, 52, 54, 61, 62, 68 and 69, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use snap or hook and loop mechanisms as the means of attaching the emery board to the Bratby-Carey container as alternative equivalent fastening means to the sticky adhesive. Bratby-Carey further discloses that the emery board is secured by the sticky adhesive, "is replaceable and can be removed" (col. 3, lines 5-12). Motivation for using alternate attachment mechanisms on the Bratby-Carey receptacle can be found since Applicant also discloses (specification, page 6) that the purpose of the snap and hook and loop mechanisms is

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to allow their filing device to be "removable from the styptic applicator, it can then be replaced when it has been worn down".

8. Claims 20 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratby-Carey ('262) in view of Burnett ('559) as applied to claims 1 and 23 and further in view of Gabriele (5,443,172). Although Bratby-Carey disclose a manicure device comprising a receptacle having a removable cap, it is not disclosed that the cap comprises a gripping surface made of elastomeric material for improved gripping. Gabriele teaches a non-slip closure grip for a receptacle wherein to use the non-slip closure grip (10), a person simply can tighten and loosen the cap member (18) on the upper portion (14) of the receptacle (12) by engaging the fingers with the elastomeric band (36). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the elastomeric grip of Gabriele on the cap of Bratby-Carey as taught by Gabriele that the elastomeric band (36) has a gripping surface to make opening and closing of the cap member (18) easier, by significantly reducing the strength required to do this.

Allowable Subject Matter

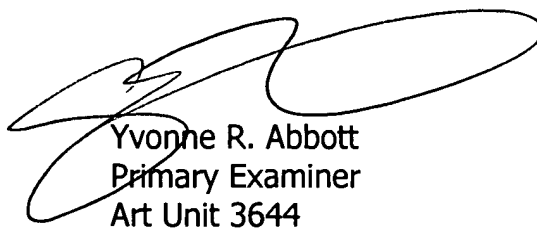
9. Claims 14-17, 22, 33, 34, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 63 is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
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